IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5201 of 2001
with
CIVIL APPLICATION NO. 12921 OF 2001

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT SECONDARY EDUCATION BOARD
Versus
HEMANTKUMAR JAMANADAS KARKAR

Appearance:
MR DIPAK R DAVE for appellant/applicant
MR KR BRAHMBHATT for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.S.JHAVERI)

The Civil Application is on Board today. However, with the consent of the parties, the First Appeal is taken up for final hearing and it is being disposed of by this judgment and order.

2. The appellant - Gujarat Secondary Education Board (for short, 'the Board') has preferred this appeal against the judgment and order dated 29th March 2001 passed by the learned 6th Jt. Civil Judge (SD), Junagadh, in Special Civil Suit No. 49 of 1993 wherein the Court has passed the decree for Rs.20,000/- with interest at the rate of 6% p.a. from the date of the suit, i.e. 17th March 1993 with cost, till realisation.

3. The plaintiff was residing at village Bhiyal in Junagadh District. He appeared in the SSC Examination in March 1989. In the subject of Hindi, he was given only 2 marks and he applied for re-assessment of the marks of the said subject. On re-assessment, the Board declared 62 marks instead of 2 marks. It is the case of the plaintiff that inspite of this correction, the Board did not supply the amended and/or corrected mark-sheet to the plaintiff in time and the same was made available to him after a period of two years. It was also the case of the plaintiff that due to negligence of the Board in not supplying the corrected mark-sheet to the plaintiff in time, he could not apply for further education for two years and thus his precious time of two years was spoiled. Therefore, he has filed the suit for damages against the respondent Board. The plaintiff had no sufficient means and therefore, the suit was filed as an indigent person, which was allowed by the Court. The defendants were served. Defendant No.1 filed the written statement at Exh.76, but defendant No.2 has not filed the written statement for a long time and it filed an application to proceed with the suit, which came to be rejected by the trial Court. Defendant No.3 also has not filed the written statement. Defendant No.1 has contended that the Civil Court has no jurisdiction to try the suit and the plaintiff is not entitled to compensation and defendants Nos. 2 and 3 are liable to pay the compensation.

4. The trial Court framed the Issues at Exh.30 and after appreciating the oral as well as documentary evidence, awarded Rs.10,000/- by way of compensation for

mental shock and trouble for non-admission in educational institution for further education for a period of one year.

5. We have heard learned Advocates Mr.Dave for the appellant Board and Mr.Brahmbhatt for respondent No.1. Mr.Dave contended that while deciding Issue No.4, the trial Court has recorded a finding that the plaintiff is entitled to get compensation of Rs.10,000/- for mental shock and suffering for non-admission in educational institution for further studies for a period of one year. However, in the operative order, the trial Court has increased the amount to Rs.20,000/- and therefore, there is an error apparent on the face of the record and hence to the extent of Rs.10,000/-, the operative order is required to be modified and the amount is required to be reduced to Rs.10,000/-.

6. It is not in dispute that though the Board has increased the marks from 2 to 62, the mark-sheet was not given to the respondent No.1 for a long period of more than two years. In paragraphs 11 to 18 of the judgment, the trial Court has discussed the modality and operation of the Board and has come to the conclusion that inspite of repeated requests of the plaintiff, though the Board was under an obligation to provide the corrected mark-sheet on demand on the part of the candidate, the Board had taken unreasonable time in providing the corrected mark-sheet to the plaintiff. The Court has also come to the conclusion that because of the delay on the part of the Board, the plaintiff could not get higher education in any educational institution. Mr.Dave for the Board could not satisfy on the count that the plaintiff has not suffered because of the delay on the part of the Board. Mr.Dave was right in his submission that in the finding in paragraph 28, the Court has awarded only Rs.10,000/- to the plaintiff, but in the operative order, by mistake, it was mentioned as Rs.20,000/-. Learned Advocate Mr.Brahmbhatt for respondent No.1 was not in a position to justify the total amount of Rs.20,000/- as referred to in the operative order.

7. We have gone through the judgment of the trial Court. We are in complete agreement with the findings of the trial Court. However, in the peculiar facts and circumstances of the case, we find that the plaintiff is entitled to get Rs.10,000/- as compensation and not Rs.20,000/- as mentioned in the operative order of the trial Court.

8. In the result, this appeal is allowed in part. The decree of the trial Court is modified to the extent that the plaintiff is entitled to get Rs.10,000/- with interest at the rate of 6% p.a. with cost from the date of the suit till deposit. Decree to be drawn accordingly. This order may not be treated as a precedent in view of the fact that the Board in the present case has taken more than two years in issuing the corrected mark-sheet to the plaintiff.

9. Learned Advocate Mr.Dave stated that the Board has deposited Rs.37,500/-. However, in view of the above order, the plaintiff is entitled to get the amount of Rs.10,000/- with interest, the balance amount of Rs.10,000/- with interest and cost may be refunded to the Board. Since the plaintiff has already withdrawn an amount of Rs.10,000/- now only the cost and interest on Rs.10,000/- may be paid to him.

10. In view of the order passed in the main appeal, the Civil Application for stay does not survive and it is disposed of accordingly.

(Kshitij R. Vyas, J.)

(K.S. Jhaveri, J.)

Sreeram.